THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO.13001 OF 2005

Date: 24.08.2005

Between:

M/s. K.Anil Reddy Electrical Works, Near 33/KV, S.S.Narsapur, Medak District at Sangaredy, rep.,by its Managing Partner A.Manik Reddy.

…Petitioner.

And

1. The Superintendent Engineer, Operation Circle, Medak, APCPDCL, Sangareddy and three others.

… Respondents.

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO.13001 OF 2005

ORDER:

In this writ petition, the action of respondents 1 to 3, in not permitted the petitioner to carry out repair works in the department shed at Narsapur, is questioned and a direction is sought to declare the 2nd respondent's letter dated 02.05.2005, whereby the 3rd respondent was instructed to ensure that the repair work of failed distribution transformers by the petitioner shall be carried out only in a private shed, as null and void.

Facts, to the extent necessary for the purpose of the writ petition, are that the

petitioner was earlier entrusted by the A.P. Electricity Board, now the A.P. Central Power Distribution Company Limited, to carry out repairs of failed distribution transformers. The Chief General Manager is said to have issued a tender notification on 15.12.2003 calling for sealed tenders for repairing the failed distribution transformers available at various SPM centers in the Districts of Anantapur, Kurnool, Mahaboobnagar, Nalgonda, Medak, Rangaredy and Hyderabad. Pursuant thereto several persons, including the petitioner herein, are said to have submitted their tenders on 07.01.2004. Since the petitioner was not intimated regarding allocation of work, he is said to have filed W.P.No. 10737 of 2004 and this Court, by order in W.P.M.P.No.13621 of 2004 in W.P.No. 10737 of 2004, dated 29.06.2004 issued interim directions to the respondents to entrust the work to the petitioner as per the rate that was fixed with reference to the lowest tenderer. Pursuant thereto the 1st respondent issued a letter of intent and an agreement was entered into with the petitioner for a value of Rs.5,00,000/-. The petitioner is said to have approached the 3rd respondent thereafter to permit him to take up the repair works at the department shed, at Narsapur. Petitioner contends that he was carrying out repairs of sick distribution transformers at Narsapur since the last 15 years in a shed which was initially constructed by him. The amounts spent by the petitioner for construction was subsequently reimbursed by the department. The 3rd respondent is said to have addressed a letter to the 2nd respondent on 19.04.2005 seeking instructions as to whether the petitioner could be permitted to commence repair works of failed distribution transformers at the Narsapur department shed. The 2nd respondent, vide letter dated 02.05.2005, directed the 3rd respondent to instruct the petitioner to carry out the repair work at the private shed only. Petitioner contends that the lowest tenderer has been carrying out repair works in a private shed at Hyderabad for the last one year, that the petitioner is in possession of the department shed at Narsapur and that they were allotted work for the face value of Rs.5,00,000/-. Petitioner submits that without considering all these factors, the 2nd respondent had arbitrarily directed that the petitioner should carry out repair works at a private shed only. It is contended that the petitioner had taken electrical supply in his name for the departmental shed and if he was now required to shift the entire material to the private shed, he would have to obtain a new electricity connection. It is further

stated that the lowest tenderer has been carrying out repair works for the last one year in a private shed in Hyderabad and never raised any dispute regarding the petitioner's failure to vacate the departmental shed. Petitioner seeks a direction that he be permitted to continue repair works, of failed distribution transformers, at the Narsapur shed belonging to the department.

Since the lowest tenderer was not a party in the writ petition, this Court by order dated 20.07.2005 in W.P.M.P.No.20076 of 2005 impleaded the lowest tenderer as the 4th respondent and directed the petitioner to take out notice. On being informed by the Counsel for the petitioner that notice had been taken out and served on the 4th respondent, and inasmuch as there was no appearance on behalf of the 4th respondent, this Court disposed of the writ petition by order dated 29.07.2005. In its order dated 29.07.2005 this Court after taking note of the contention that the 4th respondent had not chosen to appear before this Court which indicated that they were not interested in carrying out repair works at Narsapur shed, directed the 2nd respondent to consider the feasibility of allotment of the departmental shed at Narsapur to the petitioner duly obtaining an undertaking from him that on his completition of the work of Rs.5,00,000/- or a period of two years from the date of entrustment of the work, whichever is earlier, the petitioner shall handover possession of the shed to the respondents forthwith. The 2nd respondent was directed to pass appropriate orders within a period of three weeks from the date of receipt of a copy of the order.

W.P.M.P.No.22667 of 2005 has been filed by the 4th respondent to recall the earlier order passed in W.P.No.13001 of 2005, dated 29.07.2005. In the affidavit, filed in support of the W.P.M.P., the 4th respondent states that as he was the lowest tenderer, the department had allotted the Narsapur Sub-division to him and an agreement was entered into for a period of three years. The 4th respondent contends that since he is the lowest tenderer and he was awarded the repair works at Narsapur Sub-division area, the petitioner was required to vacate the shed and to handover the same to the department to enable the department to allot the shed to the 4th respondent. Instead of doing so, the petitioner had chosen to file the present writ petition. It is further stated that the 4th respondent did not receive any notice in W.P.No.13001 of 2005 either from

the Counsel of the writ petitioner or from this Court. The 4th respondent denied the allegation that notice had been served on him inspite of which he had not entered appearance in the writ petition. It is contended that from the date of the work being awarded in his favour, the 4th respondent had been requested the department to allot the departmental shed at Narsapur and since the petitioner had not vacated the departmental shed at Narsapur, the 4th respondent had no alternative except to take an alternative premises on rent. The 4th respondent categorically denies the allegation that he was not interested in carrying out repair works at the Narsapur Departmental shed and submits that the writ petitioner has no right to continue in the departmental shed, since he was not awarded the Contract for the Narsapur Sub-division. As the 4th respondent was awarded Contract for Narsapur Sub-division the departmental shed at Narsapur was required to be allotted to them.

With regard to the allegation of non-service of notice, the petitioner refers to the memo filed by him enclosing the copy of the acknowledgment, which is signed by one Sri S.Raju. The acknowledgment card reveals that the letter was addressed to M/s Santosh Electric Works, Narsapur, Medak District. Learned Counsel for the 4th respondent submits that the signature on the acknowledgment was not of any representative of the 4th respondent and that it is not known as to who signed the said acknowledgment. The address on the acknowledgment card, according to the 4th respondent, is not their address.

It is not necessary for this Court to go into the question as to whether notice was served or not, as the order passed by this Court on 29.06.2004 was without hearing the 4th respondent. Since the 4th respondent has now entered appearance and has filed counter affidavit, I deem it appropriate to order W.P.M.P.No.22667 of 2005 and recall the order passed in W.P.No.13001 of 2005, dated 29.07.2005. W.P.M.P.No.22667 of 2005 is ordered accordingly.

Since all parties are now represented before this Court and their counter affidavit filed, at their request, the writ petition is taken up for disposal at the stage of admission.

It is noticed, from the counter affidavit, filed on behalf of the respondents 1 to 3, that the 4th respondent was the lowest tenderer and though the Narsapur

shed was allotted to the 4th respondent who, as the lowest tenderer, was entitled to the shed and despite the fact that the 2nd respondent had instructed the petitioner to vacate the shed and carry out to repairs in a private shed, the petitioner had chosen not to vacate the shed belonging to the department. It is stated that the shed has been kept closed and no repair works are being undertaken thereat for the last one year. It is further stated that the petitioner is not entitled to continue to carryout repair works thereat, since first priority is to be given to the lowest tenderer to carryout repair works in the departmental shed at Narsapur. It is also stated that the petitioner is bound to vacate the premises, since he was not the lowest tenderer pursuant to the notification dated 15.12.2003 and that he was entrusted the work only in view of the interim orders passed by this Court in W.P.M.P.No.22667 of 2005, dated 29.07.2005. Admittedly the 4th respondent, being the lowest tenderer and on his being allotted repair works of failed distribution transformers of Narsapur Sub-divison area, was entitled to and in fact was allotted the department shed at Narsapur for carrying out repair works. The petitioner, was not even entrusted any work by respondents 1 to 3 and it is only pursuant to the interim orders passed by this Court that he was allotted works of Rs.5,00,000/- at the rate quoted by L-1 (4th respondent). The petitioner is therefore not entitled to contend that he should be permitted to carryout repair works at Narsapur shed, more so when the 4th respondent, as the lowest tenderer has, in categorical terms, stated that they require the departmental shed at Narsapur for carrying out repair works of failed distribution transformers of the Narsapur Sub-division area. No right, much less any fundamental right, of the petitioner has been violated by the respondents in not allotting the Narsapur departmental shed to him. The writ petition as filed is wholly misconceived and is accordingly dismissed. There shall be no order as to costs.

RAMESH RANGANATHAN, J

Date: 24.08.2005

MRKR